

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

STEVE NOLAN,)	CASE NO. 1:07 CV 3077
)	
Petitioner,)	JUDGE DAN AARON POLSTER
)	
vs.)	<u>MEMORANDUM OF OPINION</u>
)	<u>AND ORDER</u>
CHRISTINE MONEY, Warden,)	
)	
Respondent.)	

The Court is in receipt of a letter and an accompanying Order, dated December 16, 2011, from the Sixth Circuit Court of Appeals. The Order states that Petitioner Steve Nolan's appeal is being held in abeyance and is being remanded to this Court for the sole purpose of determining whether to grant or deny a certificate of appealability pursuant to Federal Rules of Appellate Procedure 22(b), Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts, and 28 U.S.C. § 2253(c).

Having reviewed the pertinent documents, including Judge O'Malley's Memorandum and Order (Doc. # 17) dismissing Petitioner's Petition for Writ of Habeas Corpus (Doc. # 1), the Court finds that Petitioner has made a substantial showing of the denial of a constitutional right with respect to an issue raised by Ground Three in his Petition. The issue is whether Petitioner was denied his Sixth Amendment right to be present and his right to a public trial when the trial

court conducted an examination of the key witness in the court's chamber and excluded Petitioner from that hearing. Accordingly, the Court hereby issues a certificate of appealability with respect to that issue. The Court is not, however, issuing a certificate of appealability for the other issue raised by Ground Three—whether Petitioner was denied his right to confront an adverse witness when this hearing was conducted in his absence—because Petitioner's attorney was present at the hearing.

The Court denies a certificate of appealability for all remaining grounds because Petitioner has failed to make a substantial showing of the denial of a constitutional right.

IT IS SO ORDERED.

/s/ *Dan Aaron Polster* *December 21, 2011*

Dan Aaron Polster

United States District Judge